

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Williamsburg County
R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. Supreme Court

RENEWICK MOSE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000609

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ATTORNEY FOR PETITIONER

INDEX

INDEX	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT	4
CONCLUSION	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

ISSUE PRESENTED

The PCR judge erred in dismissing petitioner's PCR action as untimely filed after the filing deadline was missed by three days because this strict adherence to legislative statutory parameters violated the spirit of the law with respect to petitioner's right to present his collateral claims for adjudication.

STATEMENT

Petitioner Renwick Dassan Mose pled guilty to first degree burglary and first degree assault and battery during the March 2013 term of the Williamsburg County General Sessions Court before Judge Clifton Newman. Petitioner was sentenced to an aggregate prison term of twelve years. Cesar McKnight represented petitioner at the plea proceeding, and Assistant Solicitor Kimberly V. Barr appeared on behalf of the state. App. 1-41. No direct appeal was taken from the plea proceeding.

Petitioner filed a PCR application dated March 10, 2014, with the Williamsburg County Office of the Clerk of Court, alleging allegations of ineffective assistance of trial counsel. App. 43-50. The respondent filed a return dated September 26, 2014, and moved to have petitioner's PCR application summarily dismissed as untimely filed. App. 51-54. On October 1, 2014, Judge W. Jeffrey Young issued a Conditional Order of Dismissal on the ground that petitioner's PCR action was untimely filed. App. 56-58. Petitioner submitted a "Motion in Response to Conditional Order of Dismissal" on December 5, 2014. App. 59-62. On February 5, 2015, Judge R. Ferrell Cothran, Jr. issued a Final Order dismissing petitioner's PCR action as untimely filed. App 63-64.

Petitioner appealed Judge Cothran's Final Order. This petition follows.

ARGUMENT

The PCR judge erred in dismissing petitioner's PCR action as untimely filed after the filing deadline was missed by three days because this strict adherence to legislative statutory parameters violated the spirit of the law with respect to the petitioner's right to present his collateral claims for adjudication.

During the plea proceeding, the solicitor apprised the plea judge of the facts in the case. Apparently, petitioner entered Terry Cooper's room at the Meetze Hotel in Williamsburg County on September 17, 2010, and attacked Cooper. App. 6, 1.10- p. 7, 1.6. On March 7, 2013, petitioner pled guilty to the burglary and assault charges filed in connection with the case. App. 1 – 41.

On March 10, 2014, petitioner's PCR application was stamped "filed" at the Clerk of Court's Office for Williamsburg County. App. 43 – 50. Petitioner argued in his response to the Conditional Order of Dismissal that he signed and placed his PCR application in the SCDC mailroom for mailing on February 18, 2014. App. 59 – 62.

The PCR judge ruled as follows:

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court notes S.C. Code Ann. §17-27-40 provides that a proceeding is "commenced by filing an application with the clerk of court. Mailing does not constitute filing under §17-27-45(A). Gary v. State, 347 S.C. 627,557 S.E.2d 662 (2001). This Court notes the Applicant was pled guilty on March 7, 2013. As this action was filed on March 10, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann §17-2745(a) (Supp. 2003). App. 63-64.

In Peloquin v. State, 321 SC 468, 469 S.E.2d 606 (1996), the Court held that after July 1, 1996, via S.C. 17–27-45 (a), applicants shall file their PCR actions "within one year after the entry of a judgment of a conviction or within one year after sending the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

The state contends that petitioner missed the March 7, 2014, PCR filing deadline by three (3) days. However, petitioner actually complied with the one-year PCR filing deadline because he signed, notarized, and placed his PCR application in the SCDC mail out room on February 18, 2014, which was well in advance, i.e. seventeen (17) days, before the March 7, 2014 deadline. Regardless of the calculations, petitioner clearly made a good faith effort to meet the deadline. Furthermore, an analysis of the three-day late filing dilemma in light of the overall PCR statutory scheme would seem to be a minimal time lapse. Therefore, the dismissal of petitioner's PCR action based on three-day late filing was unfair and in violation of the spirit of the PCR statutory boundaries regarding filing deadlines.

Legislative intent governs when ascertaining statutory interpretations; and the intent is discovered primarily from the language in the statute wherein words are given their plain and ordinary meaning. State v. Brown, 402 S.C. 119, 740 S.E.2d 119 (2013). However, a court can consider the spirit of the enactment or the spirit of a law if the letter of the law or the literal import of the statute would lead to an absurd result that could not have been contemplated by the legislature. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E. 2d 258 (1984); South Carolina Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946).

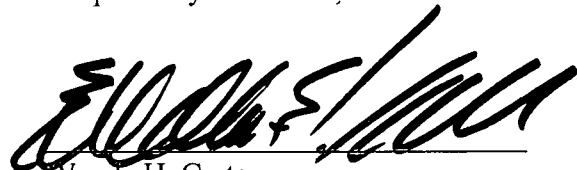
Here, it was unconscionable for the PCR judge to dismiss petitioner's PCR action when he mailed his PCR application in seventeen days prior to the deadline to do so, and due to no fault of his own, his PCR application did not leave the SCDC mailroom in time to reach the Clerk's Office until a mere three days after the statutory deadline of one-year to file PCR actions. Therefore, based on the totality of the circumstances surrounding petitioner's pursuit of his PCR action, a sense of

fundamental fairness and equity would require that the spirit of the PCR statutory parameters regarding PCR filing deadlines rule in petitioner's case rather than the letter of the law in his case.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing in the above raised issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO WILLIAMSBURG COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

RENWICK MOSE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

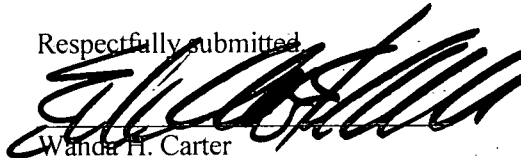
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Renwick Mose states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on n/a. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Renwick Mose.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of November, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

R. Ferrell Cothran, Jr., Circuit Court Judge

RENWICK MOSE,

PETITIONER,

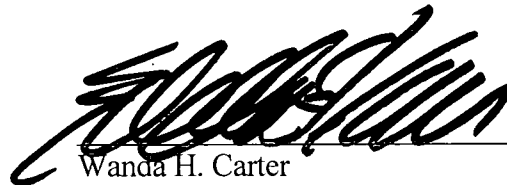
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

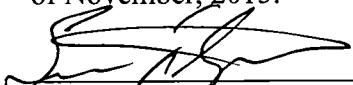
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Renwick Mose, #271319, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 30th day of November, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of November, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.